IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2090 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GANPATBHAI LALABHAI KAHAR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2090 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 06/12/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four offences were registered against him before Southern Division Police Station between 24/06/03 and 05/11/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that the petitioner had staged quarrels with the said witnesses and on account of that many persons had gathered at the spot. That, at that time, the petitioner had took out a knife from his pocket and had run towards the persons who had gathered at the spot. That, therefore, an atmosphere of fear was generated by him.

3. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that there was a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. The learned AGP submits affidavit of the detaining authority. It is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for

the petitioner has argued that simply because a few offences under the Bombay Prohibition Act have been registered against the petitioner, it could not be said that the petitioner's activities were such so as to raise a threat to public order. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City reported in A.I.R. 1989 SC 491. Para 17 & 18 of the said decision are relevant which are reproduced for ready reference as follows;

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged antisocial activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may

> be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in subsection (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

7. The above observations will directly and squarely apply to the case on hand. It has, therefore, to be held that mere registration of offences would not lead to a threat to pulibc order. Therefore, the impugned order can not be sustained.

8. The learned advocate for the petitioner has also contended that the names of the witnesses were not disclosed to the petitioner. That when the names were not disclosed, the petitioner could not submit an effective representation against his detention. The learned AGP has contended that u/s.9(2) of the said Act, the detaining authority has a power of privilege. There is no dispute about the same. However, it has been laid down by this Court (Coram : Hon'ble Mr.Justice A.L.Dave) in S.C.A.No.14925/2003 dated 04/12/03 that while claiming the right of privilege, the detaining authority should have credible material with it showing that the detaining authority has examined and verified the correctness and genuineness about the fear running in the minds of the witnesses. In view of the above position, it is clear that while claiming privilege u/s.9(2) of the said Act, the detaining authority should have credible material before it. In the present case, we find that the detaining authority has simply recorded the statements of the witnesses and no further enquiry appears to have been made. This shows that the detaining authority did not have credible material with it in order to find that the conduct of the petitioner was such that the names of the

witnesses should not have been disclosed to the petitioner. In absence of any material with it, nondisclosure of the names of the witnesses would be fatal to the detention order. The reason is that the petitioner has a right to submit an effective representation against his detention. If the names of the witnesses are not disclosed, then the petitioner would not be in a position to submit an effective representation against his detention.

9. So, on the one hand, the power of privilege u/s.9(2) has not been properly exercised and on the other hand, the names of the witnesses have not been disclosed to the petitioner. This means that the petitioners' right to make an effective representation has been impliedly denied. In that view of the matter, the further continuance of the detention of the petitioner cannot be sustained in the eye of law. Therefore, the petitioner is required to be released from detention. This can be done by passing an order quashing and setting aside the order of detention.

10. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 06/12/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Ganpathbhai Lalabhai Kahar, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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